

Kevin P.B. Johnson (Bar No. 177129)
QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP
555 Twin Dolphin Drive, Suite 560
Redwood Shores, California 94065-2139
Telephone: (650) 801-5000
Facsimile: (650) 801-5100

Steven M. Anderson (Bar No. 144014)
QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP
865 S. Figueroa St. 10th Floor
Los Angeles, California 90017
Telephone: (213) 443-3000
Facsimile: (213) 443-3100

Attorneys for Plaintiff Sony Corporation

Kevin G. McBride (State Bar No. 195866)
kgmcbride@jonesday.com
Steven J. Corr (State Bar No. 216243)
sjcorr@jonesday.com
JONES DAY
555 S. Flower Street, 50th Floor
Los Angeles, CA 90071
Telephone: (213) 489-3939
Facsimile: (213) 243-2539

James L. Wamsley III (admitted *pro hac vice*)
jlwamsleyiii@jonesday.com
901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: (216) 586-3939
Facsimile: (216) 579-0212

Attorneys for Defendant VIZIO, Inc.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

SONY CORPORATION, A Japanese
Corporation,

Plaintiff,

vs.

VIZIO, Inc.,

Defendant.

Case No. SACV 08-01135-RGK (FMOx)

PROTECTIVE ORDER

[DISCOVERY MATTER]

Judge: Hon. Fernando M. Olguin

Trial Date: January 26, 2010

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

13 ORDERED THAT:

16 1. “Party”: any party to this action or a subsidiary thereof, including all
17 of its officers, directors, employees, consultants, retained experts, and
18 outside counsel (and their support staff).
19
20 2. “Material”: all information, documents, testimony, and things
21 produced, served or otherwise provided in this action by the Parties
22 or by non-parties.
23
24 3. “Designating Party”: a Party or non-party that designates
25 information, documents, or things for production in disclosures, or in
26 responses to discovery as “CONFIDENTIAL”, “OUTSIDE
27

1 ATTORNEYS' EYES ONLY", "OUTSIDE ATTORNEYS' EYES
2 ONLY – SOURCE CODE."

3 4. "CONFIDENTIAL" Material: information, documents, and things
4 the Designating Party has good cause to believe is not generally
5 known to others, and which the Designating Party (i) would not
6 normally reveal to third parties except in confidence, or has
7 undertaken with others to maintain in confidence, or (ii) has good
8 cause to believe is protected by a right to privacy under federal or
9 state law, or any other applicable privilege or right related to
10 confidentiality or privacy.
11

12 13
14 5. "OUTSIDE ATTORNEYS' EYES ONLY" Material: information,
15 documents, and things the Designating Party has good cause to
16 believe is not generally known to others, and has significant
17 competitive value such that unrestricted disclosure to others,
18 including the Receiving Party's in-house counsel, would create a
19 substantial risk of serious injury, and which the Designating Party (i)
20 has good cause to not normally reveal to third parties except in
21 confidence, or has undertaken with others to maintain in confidence,
22 or (ii) has good cause to believe is significantly sensitive and
23 protected by a right to privacy under federal or state law or any other
24 applicable privilege or right related to confidentiality or privacy.
25
26
27
28

1 6. “OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE”:

2 RTL, HDL, microcode, or other sensitive code or schematics
3 (collectively, “SOURCE CODE”) that the Designating Party has
4 good cause to believe is not generally known to others, and has
5 significant competitive value such that unrestricted disclosure to
6 others would create a substantial risk of serious injury, and which the
7 Designating Party (i) has good cause to not normally reveal to third
8 parties except in confidence, or has undertaken with others to
9 maintain in confidence, or (ii) has good cause to believe is
10 significantly sensitive and protected by a right to privacy under
11 federal or state law, or any other applicable privilege or right related
12 to confidentiality or privacy.
13

14 7. “Producing Party”: a Party or non-party that produces Material in this
15 action.
16

17 8. “Receiving Party”: a Party that receives Material from a Producing
18 Party.
19

20 9. “Designated Material”: Material that is designated
21 “CONFIDENTIAL”, “OUTSIDE ATTORNEYS’ EYES ONLY”, or
22 “OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” under
23 this Order.
24
25
26
27
28

1 10. "Counsel of Record": (i) outside counsel who appears on the
2 pleadings as counsel for a Party, (ii) partners, principals, associates,
3 and employees of such outside counsel to whom it is reasonably
4 necessary to disclose the information for this litigation, including
5 supporting personnel employed by the attorneys, such as paralegals,
6 legal translators, legal secretaries, legal clerks and shorthand
7 reporters, and/or (iii) independent legal translators retained to
8 translate in connection with this action, or independent shorthand
9 reporters retained to record and transcribe testimony in connection
10 with this action.
11

12 11. "Outside Consultant": a person with specialized knowledge or
13 experience in a matter pertinent to the litigation who has been
14 retained by Counsel of Record to serve as an expert witness, or as a
15 consultant in this action, and who is not a current employee of a Party
16 or of a competitor of a Party and who, at the time of retention, is not
17 anticipated to become an employee of a Party or of a competitor of a
18 Party.
19

20 12. "Professional Vendors": persons or entities that provide litigation
21 support services (e.g., photocopying; videotaping; translating;
22 designing and preparing exhibits, graphics, or demonstrations;
23 organizing, storing, retrieving data in any form or medium; etc.) and
24
25
26
27
28

1 their employees and subcontractors who have been retained by
2 Counsel of Record in this action, and who are not current employees
3 of a Party or of a competitor of a Party and who, at the time of
4 retention, are not anticipated to become employees of a Party or of a
5 competitor of a Party. This definition includes professional jury or
6 trial consultants retained in connection with this litigation, and mock
7 jurors retained by such a consultants to assist them in their work.
8 Professional vendors do not include consultants who fall within the
9 definition of Outside Consultant.
10
11

12 **II. Good Cause Statement**

13 13. A Producing Party shall not designate Material as
14 “CONFIDENTIAL”, “OUTSIDE ATTORNEYS’ EYES ONLY”, or
15 “OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE”,
16 unless good cause exists. Good cause shall exist when public
17 knowledge of a trade secret or other confidential research,
18 development, or commercial information would result in specific
19 prejudice or harm to the Producing Party, such as the public
20 disclosure of proprietary information, failure to maintain status as a
21 trade secret, detriment to intellectual property, or other harm to the
22 Producing Party’s competitive standing in the marketplace.
23
24
25
26
27
28

1 14. Items for which good cause shall exist include, but are not limited to,
2 i) proprietary technical documents such as blueprints, schematics,
3 SOURCE CODE or other technical materials; ii) customer lists and
4 other customer data which have economic value to the producing
5 party and are not public; iii) industry data or analysis which has
6 economic value to the producing party and is not public; iv) contracts,
7 licenses, agreements and documents or information related to such
8 that are normally kept confidential during the ordinary course of
9 business; v) financial and sales information and related documents,
10 such as cost, pricing, margin, and other financial data; vi) corporate
11 planning, strategy and/or budget information or documents; vii) non-
12 public or draft patent applications; viii) invention disclosures; ix)
13 internal communications; and x) information or documents
14 originating with a third party and which the Producing Party bears an
15 obligation, either explicit or implicit, to not disclose publicly. Good
16 cause shall also exist for Materials, including Materials generated
17 during the pendency of this litigation (or prior to this litigation but
18 related to it), which are based on and/or contain information derived
19 from such information.
20
21
22
23
24
25

26 15. Good cause shall not exist for any document or information which
27 is generally known to or accessible by members of the public. For
28

1 example, good cause shall not exist for a) any information that at the
2 time of disclosure to a Receiving Party is in the public domain, b)
3 any information that after disclosure to the Receiving Party becomes
4 part of the public domain as a result of publication not involving a
5 violation of this Protective Order; c) any information that a Receiving
6 Party can show was received by it, whether before or after the
7 disclosure, from a source who obtained the information lawfully and
8 under no obligation or confidentiality to the Producing Party, and/or
9 d) any information that a Receiving Party can show was
10 independently developed by it after the time of disclosure by
11 personnel who have not had access to the Producing Party's
12 Materials. Such information may include, but is not limited to, any
13 publicly available patent application materials or related filings;
14 publicly filed financial disclosures; information available on the
15 Internet without use of a password or other security protection;
16 information previously included in press releases or other marketing
17 activities; information and documents normally distributed to the
18 public, or publicly filed court documents. Good cause shall not exist
19 for other items not listed here that share the same general
20 characteristics as the items listed in this paragraph. Nor shall good
21 cause exist for any information or document the public disclosure of
22
23
24
25
26
27
28

1 which would not result in specific prejudice or harm to the Producing
2 Party.

3 **III. Scope**
4

5 16. The protections conferred by this Order are limited to those within
6 the scope of the Federal Rules of Civil Procedure and the Local Rules
7 of the United States District Court for the Central District of
8 California (“Local Rules”). Unless otherwise ordered by the Court,
9 the dispute resolution procedures described below shall be carried out
10 pursuant to Local Rule 37.
11

12
13 17. The protections conferred by this Order cover not only Designated
14 Material (as defined above), but also any information copied or
15 extracted therefrom, as well as all copies, excerpts, summaries, or
16 compilations thereof. Nothing herein shall alter or change in any
17 way the discovery provisions of the Federal Rules of Civil Procedure,
18 or the Court’s deadlines provided in the Scheduling Order or any
19 other Order. Identification of any individual pursuant to this
20 Protective Order does not make that individual available for
21 deposition, or any other form of discovery outside of the restrictions
22 and procedures of the Federal Rules of Civil Procedure, the Local
23 Rules of the United States District Court for the Central District of
24
25
26
27
28

1 California, and the Court's deadlines provided in the Scheduling
2 Order.

3 **IV. Access to Designated Material**
4

5 18. **CONFIDENTIAL Material:** Unless otherwise ordered by the
6 Court or permitted in writing by the Designating Party, a Receiving
7 Party may disclose any information, document or thing designated
8 "CONFIDENTIAL" only to the following, in addition to those
9 identified in Paragraphs 33 and 34 below regarding use of Designated
10 Material at depositions:
11

12
13 a) Persons who appear on the face of Designated Material as an
14 author, addressee or recipient thereof;

15 b) Counsel of Record;

16
17 c) Up to four (4) employees of a Receiving Party and necessary
18 secretarial staff who are responsible for providing oversight of or assistance in the
19 litigation, and who have signed the "Acknowledgement and Agreement To Be
20 Bound By Protective Order" attached hereto as Exhibit A;

21
22 d) Up to two (2) in-house attorneys (including in-house foreign
23 patent attorneys) of the Receiving Party, and necessary secretarial staff, having
24 responsibility for providing oversight of or assistance in the litigation, provided that
25 each such attorney must keep all such documents and information in segregated files
26 access to which is restricted to the designated attorney and necessary secretarial
27
28

1 staff, and who have signed the “Acknowledgement and Agreement To Be Bound By
2 Protective Order” attached hereto as Exhibit A;

3 e) With respect to Designated Material from third parties, absent a
4 protective order or agreement of the third party, Designated Material from third
5 parties may not be disclosed to employees of a Receiving Party, including in-house
6 attorneys;
7

8 f) Outside Consultants of the Receiving Party to whom disclosure
9 is reasonably necessary for this litigation, and who have signed the
10 “Acknowledgement and Agreement To Be Bound By Protective Order” attached
11 hereto as Exhibit A, and the “Certification Of Consultant” attached hereto as
12 Exhibit B;
13

14 g) The Court and its personnel;

15 h) Any designated arbitrator or mediator who is assigned to hear
16 this matter, or who has been selected by the Parties, and his or her staff, who have
17 signed the “Acknowledgement and Agreement To Be Bound By Protective Order”
18 attached hereto as Exhibit A, and the “Certification Of Consultant” attached hereto
19 as Exhibit B;
20

21 i) Court reporters and videographers employed in connection with
22 this case; and
23

24 j) Professional Vendors to whom disclosure is reasonably
25 necessary for this litigation, and a representative of which has signed the
26
27
28

1 “Acknowledgement and Agreement To Be Bound By Protective Order” attached
2 hereto as Exhibit A.

3
4 19. **“OUTSIDE ATTORNEYS’ EYES ONLY” and “OUTSIDE**
5 **ATTORNEYS’ EYES ONLY – SOURCE CODE” Material:**

6 Unless otherwise ordered by the Court or permitted in writing by the
7 Designating Party, a Receiving Party may disclose any information,
8 documents or things designated “OUTSIDE ATTORNEYS’ EYES
9 ONLY” and “OUTSIDE ATTORNEYS’ EYES ONLY –
10 SOURCE CODE” only to the following, in addition to those
11 identified in Paragraphs 33 and 34 below regarding use of Designated
12 Material at depositions:
13
14

15 a) Persons who appear on the face of Designated Material as an
16 author, addressee or recipient thereof;
17

18 b) Counsel of Record;
19

20 c) With respect to Designated Material from third parties, absent a
21 protective order or agreement of the third party, Designated Material from third
22 parties may not be disclosed to employees of a Receiving Party, including in-house
23 attorneys.
24

25 d) Outside Consultants of the Receiving Party to whom disclosure
26 is reasonably necessary for this litigation, and who have signed the
27 “Acknowledgement and Agreement To Be Bound By Protective Order” attached
28

1 hereto as Exhibit A, and the “Certification Of Consultant” attached hereto as
2 Exhibit B;

3 e) The Court and its personnel;

4 f) Any designated arbitrator or mediator who is assigned to hear
5 this matter, or who has been selected by the Parties, and his or her staffs, who have
6 signed the “Acknowledgement and Agreement To Be Bound By Protective Order”
7 attached hereto as Exhibit A, and the “Certification Of Consultant” attached hereto
8 as Exhibit B;
9

10 g) Court reporters and videographers employed in connection with
11 this case; and
12

13 h) Professional Vendors to whom disclosure is reasonably
14 necessary for this litigation, and a representative of which has signed the
15 “Acknowledgement and Agreement To Be Bound By Protective Order” attached
16 hereto as Exhibit A.
17

18
19 20. Each person to whom Designated Material may be disclosed, and
20 who is required to sign the “Acknowledgement and Agreement To
21 Be Bound By Protective Order” attached hereto as Exhibit A and, if
22 applicable, the “Certification Of Consultant” attached hereto as
23 Exhibit B, shall do so, prior to the time such Designated Material is
24 disclosed to him or her. Counsel for a Party who makes any
25 disclosure of Designated Material shall retain each original executed
26
27
28

1 certificate and, upon written request, shall provide copies to counsel
2 to all other Parties at the termination of this action.

3 21. At the request of the Designating Party, persons not permitted
4 access to Designated Material under the terms of this Protective
5 Order shall not be present at depositions while the Designating
6 Party's Designated Material is discussed or otherwise disclosed. Any
7 Party intending to disclose or discuss Designated Material at pretrial
8 or trial proceedings must give advance notice to assure the
9 implementation of the terms of this Protective Order.
10
11
12

13 **V. Access By Outside Consultants**

14 22. **Notice.** If a Receiving Party wishes to disclose another Party's
15 Designated Material to any Outside Consultant, such Receiving Party
16 must provide notice to counsel for the Designating Party, which
17 notice shall include: (a) the individual's name and business title; (b)
18 business address; (c) business or profession; (d) the individual's CV;
19 (e) any previous or current relationship (personal or professional)
20 with any of the parties; (f) a list of other cases in which the individual
21 has testified (at trial or deposition) within the last four years; (g) a list
22 of all companies with which the individual has consulted or by which
23 the individual has been employed within the last four years; and (h) a
24 signed copy of the "Acknowledgement and Agreement To Be Bound
25
26
27
28

1 By Protective Order” attached as Exhibit A, and the “Certification Of
2 Consultant” attached hereto as Exhibit B. No Party will seek
3 discovery from a non-testifying Outside Consultant disclosed under
4 this Order simply because they have been disclosed under this Order
5 without an Order of this Court based on a finding of good cause.
6

7 **23. Objections.** The Designating Party shall have five (5) business
8 days from receipt of the notice specified in Paragraph 22 to object in
9 writing to such disclosure (plus three (3) extra days if notice is given
10 other than by hand delivery, e-mail transmission or facsimile
11 transmission). Any such objection must set forth in detail the grounds
12 on which it is based. After the expiration of the 5-day (plus 3-days, if
13 appropriate) period, if no objection has been asserted, then
14 Designated Material may be disclosed to the Outside Consultant
15 pursuant to the terms of this Order. However, if the Designating
16 Party objects within the 5-day (plus 3-days, if appropriate) period, the
17 Receiving Party may not disclose Designated Material to the
18 challenged individual absent resolution of the dispute pursuant to
19 Local Rule 37 or Court Order. In the event the Designating Party
20 makes a timely objection, the parties shall promptly meet and confer
21 pursuant to Local Rule 37 to try to resolve the matter by agreement.
22 If the parties cannot reach an agreement, pursuant to Local Rule 37
23
24
25
26
27
28

1 the Objecting Party may, within three (3) business days following the
2 meet and confer, file a motion for a protective order preventing
3 disclosure of Designated Material to the Outside Consultant, or for
4 other appropriate relief. If the objecting party fails to file a motion for
5 protective order within the prescribed period, any objection to the
6 Outside Consultant is waived, and Designated Material may
7 thereafter be disclosed to such individual (upon signing the
8 “Acknowledgement and Agreement To Be Bound By Protective
9 Order” attached hereto as Exhibit A). If the Objecting party files
10 pursuant to Local Rule 37 a timely motion for a protective order,
11 Designated Material shall not be disclosed to the challenged
12 individual until and unless a final ruling allowing such disclosure is
13 made by this Court, or by the consent of the Objecting party,
14 whichever occurs first.

15
16
17
18
19 **VI. Production of ATTORNEYS’ EYES ONLY – SOURCE CODE Material**

20
21 24. If a Party is required to produce SOURCE CODE, it must do so in
22 electronically searchable form and under the terms of Section VI.
23 The Producing Party shall produce SOURCE CODE preferably on a
24 hard drive, or alternatively on a stand-alone laptop computer. The
25 stand-alone computer or hard drive shall contain appropriate software
26 for accessing and reviewing the SOURCE CODE. All data on any
27
28

1 stand-alone computer or hard drive, including all SOURCE CODE,
2 shall be protected by confidential passwords or codes and, at the
3 option of the Producing Party, may be encrypted. In addition to the
4 SOURCE CODE, a stand-alone computer or hard drive shall contain
5 the software used to develop the SOURCE CODE, if that software is
6 possessed by the Producing Party and is not subject to restrictions
7 regarding its use that would preclude the Producing Party from
8 providing copies. The Parties will work together to ensure any
9 produced SOURCE CODE can be accessed by the Receiving Party in
10 accordance with the terms of this Order.
11
12
13

14 25. If the Receiving Party wants to use other software to access or
15 review the SOURCE CODE, it must notify the Producing Party of
16 the specific software to be used before installing such software on the
17 stand-alone computer or hard drive, or using such software to access
18 or review the SOURCE CODE. By close of business on the next
19 business day after receiving notice from Receiving Party, Producing
20 Party will provide Receiving Party with the appropriate key or
21 password to enable Receiving Party to install such software on the
22 stand-alone computer or hard drive, or to use such software to access
23 or review the SOURCE CODE. Unless otherwise agreed to in
24 writing by the Producing Party, and such agreement shall not be
25
26
27
28

1 unreasonably withheld, the Receiving Party is not permitted to use
2 any other software to access or review the SOURCE CODE, or
3 install or run any other software on any stand-alone computer or hard
4 drive. Any stand-alone computer or hard drive containing the
5 SOURCE CODE shall be maintained by the Receiving Party's
6 Counsel of Record under lock and key at its offices. While the
7 SOURCE CODE is maintained on the stand-alone computer or hard
8 drive, it will be handled in accordance with the "OUTSIDE
9 ATTORNEYS' EYES ONLY – SOURCE CODE" designation.
10
11

12
13 26. No electronic copies of the SOURCE CODE will be permitted. If
14 the Receiving Party wishes to make a paper copy of certain limited
15 portions of the SOURCE CODE, such as routines or sub-routines,
16 only one (1) paper copy of those limited portions will be allowed on
17 watermarked paper. A log shall be maintained of any selected
18 portions printed out to paper. The log will be provided to the
19 Producing Party upon request. The Receiving Party will not be
20 allowed to print any wholesale or unnecessarily large portions of the
21 SOURCE CODE from the stand-alone computer or hard drive.
22
23

24
25 27. A Receiving Party may request a Producing Party to provide up to
26 three (3) additional electronic copies of SOURCE CODE that may be
27 kept at other offices of the Receiving Party's Counsel of Record
28

1 under the same restrictions described above. Any such electronic
2 copies may be maintained only at the offices of the Receiving Party's
3 Counsel of Record. The Receiving Party shall maintain a log
4 indicating, at all times, the location of each stand-alone computer or
5 hard drive containing SOURCE CODE.
6

7 28. Access to a stand-alone computer or hard drive must be controlled
8 by the use of confidential passwords or codes. At the option of the
9 Producing Party, data on any stand-alone computer or hard drive may
10 be encrypted. A hard drive containing the SOURCE CODE may be
11 connected only to a stand-alone computer. A stand-alone computer
12 (as referenced in Section VI) shall not be connected to a network, the
13 Internet or any peripheral device, except to a stand-alone printer or to
14 a hard drive provided by the Producing Party. A stand-alone
15 computer shall not have the ability to electronically transmit
16 information therefrom, including, without limitation, via a Local
17 Area Network or Internet connection, wireless connection, a modem,
18 or any other port or device capable of electronic transmission. All
19 input/output ports on a stand-alone computer shall be disabled,
20 except for a printer port and any port necessary to attach a hard drive
21 provided by the Producing Party. Access to a stand-alone computer
22
23
24
25
26
27
28

1 must be further controlled by the use of confidential passwords or
2 codes in order to log onto the stand-alone computer.

3 29. The Producing Party will produce the relevant SOURCE CODE in
4 its entirety (i.e., all code necessary for compilation), but need not
5 produce it in executable format absent a specific request from the
6 Receiving Party, which a Receiving Party will only make when
7 necessary.
8

9
10 30. If the Receiving Party prints a paper copy of any SOURCE CODE
11 designated as "OUTSIDE ATTORNEYS' EYES ONLY – SOURCE
12 CODE", such paper copy must always be kept under lock and key at
13 the office of the Receiving Party's Outside Counsel of Record or
14 other agreed upon location. Paper copies of SOURCE CODE
15 designated as "OUTSIDE ATTORNEYS' EYES ONLY – SOURCE
16 CODE" shall include Bates number and confidentiality labels when
17 printed.
18
19
20

21 **VII. Prosecution Bar**

22 31. Unless otherwise agreed to in writing by a Producing Party, any
23 individual subject to this Protective Order who obtains, receives or
24 otherwise learns, in whole or in part, technical Designated Material
25 from a Producing Party relating to a party's products or processes,
26 shall not prepare, prosecute or be involved in the preparation or
27
28

1 prosecution of any patent application related to the subject matter
2 claimed in any of the patents-in-suit during the pendency of this
3 litigation and for a period of two (2) years following the conclusion
4 of this litigation (including, if applicable, any appeals therefrom).
5

6 **VIII. Use Of Designated Material**

7 **32. Use Of Designated Material By Receiving Party.** Unless
8 otherwise ordered by the Court, or agreed to in writing by the Parties,
9 all Designated Material, and all information derived therefrom, shall
10 be used by the Receiving Party only for purposes of this litigation
11 and for the litigation known as Vizio, Inc. v. Sony Corporation, Case
12 No. CV 09-2129, and shall not be used in any other way, or for any
13 other purpose. Information contained or reflected in Designated
14 Materials shall not be disclosed in conversations, presentations by
15 parties or counsel, in court or in other settings that might reveal
16 Designated Material, except in accordance with the terms of this
17 Order.
18

19 **33. Use Of Designated Material By Designating Party.** Nothing in
20 this Order shall limit any Designating Party's use of its own
21 documents and information, nor shall it prevent the Designating Party
22 from disclosing its own confidential information, documents or
23 things to any person. Such disclosure shall not affect any
24
25
26
27
28

1 designations made pursuant to the terms of this Order, so long as the
2 disclosure is made in a manner that is reasonably calculated to
3 maintain the confidentiality of the information.
4

5 **34. Use of Designated Material at Depositions.** Except as may be
6 otherwise ordered by the Court, any person may be examined as a
7 witness at depositions and trial, and may testify concerning all
8 Designated Material of which such person has prior knowledge,
9 without in any way limiting the generality of the following:
10

11 a) A present director, officer, employee, designated Rule 30(6)(b)
12 witness, and/or Outside Consultant of a Producing Party may be examined, and may
13 testify concerning all Designated Material which has been produced by that party;
14

15 b) A former director, officer, agent and/or employee of a Producing
16 Party may be interviewed, examined and may testify concerning all Designated
17 Material of which he or she has prior knowledge, including any Designated Material
18 that refers to matters of which the witness has personal knowledge, which has been
19 produced by that Party and which pertains to the period or periods of his or her
20 employment; and
21

22 c) Non-parties may be examined or testify concerning any
23 document containing Designated Material of a Producing Party which appears on its
24 face, or from other documents or testimony, to have been received from, or
25 communicated to, the non-party as a result of any contact or relationship with the
26
27
28

1 Producing Party, or a representative of such Producing Party. Any person other than
2 the witness, his or her attorney(s), and any person qualified to receive Designated
3 Material under this Order, shall be excluded from the portion of the examination
4 concerning such information, unless the Producing Party consents to persons other
5 than qualified recipients being present at the examination. If the witness is
6 represented by an attorney who is not qualified under this Order to receive such
7 information, then prior to the examination, the attorney shall be requested to sign the
8 “Acknowledgement and Agreement To Be Bound By Protective Order” attached as
9 Exhibit A. In the event that such attorney declines to sign the “Acknowledgement
10 and Agreement To Be Bound By Protective Order” prior to the examination, the
11 parties, by their attorneys, shall jointly seek a protective order from the Court
12 prohibiting such attorney from disclosing such Designated Material.
13
14
15
16

17 35. A witness who previously had access to a document designated
18 "CONFIDENTIAL," "OUTSIDE ATTORNEYS' EYES ONLY," or
19 "OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE," but
20 who is not under a present non-disclosure agreement with the
21 Producing Party that covers that document, may be shown the
22 document if the witness is advised on the record of the existence of
23 the Protective Order and that the protective order requires the parties
24 to keep confidential any questions, testimony or documents that are
25 designated as “CONFIDENTIAL”, “OUTSIDE ATTORNEYS’
26
27
28

1 EYES ONLY”, or “OUTSIDE ATTORNEYS’ EYES ONLY –
2 SOURCE CODE”. The witnesses may not copy, take notes on or
3 retain copies of any Designated Material used or reviewed at the
4 deposition. The witness may not take out of the deposition room any
5 exhibit that is marked “CONFIDENTIAL”, “OUTSIDE
6 ATTORNEYS’ EYES ONLY”, or “OUTSIDE ATTORNEYS’
7 EYES ONLY – SOURCE CODE”. The Producing Party of any
8 Designated Material used at the deposition may also require that the
9 transcript and exhibits not be copied by the witness or his counsel
10 and that no notes may be made of the transcript or the exhibits. The
11 restrictions in this paragraph apply only to a witness who is not
12 subject to this Order.
13
14
15
16

17 **IX. Procedure for Designating Materials**

18 36. Subject to the limitations set forth in this Order, a Designating Party
19 may: designate as “CONFIDENTIAL” information that the
20 Designating Party has good cause to believe meets the definition set
21 forth in Paragraph 4 above; designate as “OUTSIDE ATTORNEYS’
22 EYES ONLY” information that it has good cause to believe meets
23 the definition set forth in Paragraph 5 above; designate as
24 “OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE”
25
26
27
28

1 information that it has good cause to believe meets the definition set
2 forth in Paragraph 6 above.

3 37. Except as provided above in Section VI with respect to “OUTSIDE
4 ATTORNEYS’ EYES ONLY – SOURCE CODE” Material, any
5 material (including physical objects) made available for initial
6 inspection by counsel for the Receiving Party prior to producing
7 copies of selected items shall initially be considered, as a whole, to
8 constitute “OUTSIDE ATTORNEYS’ EYES ONLY” information,
9 and shall be subject to this Order. Thereafter, the Producing Party
10 shall have ten (10) calendar days from the inspection to review and
11 designate the appropriate documents as “CONFIDENTIAL,”
12 “OUTSIDE ATTORNEYS’ EYES ONLY” prior to furnishing copies
13 to the Receiving Party.

14 38. Except as otherwise provided in this Order or as otherwise
15 stipulated or ordered, Material that qualifies for protection under this
16 Order must be designated in accordance with this Section IX before
17 the Material is disclosed or produced.

18 39. Designation in conformity with this Order requires:

19 a) For information in documentary form (apart from transcripts of
20 depositions, or other pretrial or trial proceedings), the Producing Party shall affix the
21 legend “CONFIDENTIAL”, “OUTSIDE ATTORNEYS’ EYES ONLY” or
22
23
24
25
26
27
28

1 “OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” on each page that
2 contains Designated Material;

3 b) For testimony given in deposition, or in other pretrial or trial
4 proceedings, the Designating Party shall specify any portions of the testimony that it
5 wishes to designate as “CONFIDENTIAL”, “OUTSIDE ATTORNEYS’ EYES
6 ONLY” or “OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE.” In the
7 case of depositions, the Designating Party may also designate any portion of a
8 deposition transcript as “CONFIDENTIAL,” “OUTSIDE ATTORNEYS’ EYES
9 ONLY” or “OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE,” by
10 informing the reporter, and opposing Parties, in writing within thirty (30) calendar
11 days of completion of the deposition of the designations to be applied. All
12 deposition transcripts not marked at least “CONFIDENTIAL” during the deposition
13 will nonetheless be treated as “CONFIDENTIAL” until the thirty (30) day period
14 has expired. Transcript pages containing Designated Material must be separately
15 bound by the court reporter, who must affix to the top of each such page the legend
16 “CONFIDENTIAL”, “OUTSIDE ATTORNEYS’ EYES ONLY” or “OUTSIDE
17 ATTORNEYS’ EYES ONLY – SOURCE CODE”, as instructed by the Designating
18 Party; and

19 c) For information produced in some form other than documentary,
20 and for any other tangible items, the Producing Party shall affix in a prominent place
21 on the exterior of the container or containers in which the information or thing is
22

1 stored the legend “CONFIDENTIAL”, “OUTSIDE ATTORNEYS’ EYES ONLY”
2 or “OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE.”

3 **IX. No Waiver of Privilege**

4
5 40. Inspection or production of documents (including physical objects)
6 shall not constitute a waiver in any Federal or State proceeding of the
7 attorney-client privilege, work product immunity, or any other
8 applicable privilege or immunity. After the Producing Party becomes
9 aware of any inadvertent or unintentional disclosure, the Producing
10 Party may designate any such documents as within the attorney-client
11 privilege, work product immunity or any other applicable privilege or
12 immunity, and request in writing return of such documents to the
13 Producing Party. The inadvertent or unintentional disclosure shall not
14 operate as a waiver in a Federal or State proceeding whether or not
15 the holder or the privilege or immunity took reasonable steps to
16 prevent the disclosure or promptly took reasonable steps to rectify the
17 error in accordance with Federal Rule of Evidence 502(b). Upon
18 request by the Producing Party, the Receiving Party shall
19 immediately retrieve and return all copies of such inadvertently
20 produced document(s). Nothing herein shall prevent the Receiving
21 Party from challenging the propriety of the attorney-client privilege,
22
23
24
25
26
27
28

1 work product immunity or other applicable privilege or immunity
2 designation by submitting a written challenge to the Court.

3 **X. Inadvertent Failure To Designate**
4

5 41. An inadvertent failure to designate qualified information,
6 documents or things as “CONFIDENTIAL”, “OUTSIDE
7 ATTORNEYS’ EYES ONLY”, or “OUTSIDE ATTORNEYS’
8 EYES ONLY – SOURCE CODE,” does not, standing alone, waive
9 the Designating Party’s right to secure protection under this Order for
10 such material. Upon discovery of an inadvertent failure to designate,
11 a Producing Party may notify the Receiving Party in writing that the
12 material is to be designated as “CONFIDENTIAL”, “OUTSIDE
13 ATTORNEYS’ EYES ONLY” or “OUTSIDE ATTORNEYS’ EYES
14 ONLY – SOURCE CODE.” Upon receipt of such notice, the
15 Receiving Party must make reasonable efforts to assure that the
16 material is treated in accordance with the terms of this Order, subject
17 to the right to challenge the propriety of such designation(s). The
18 Producing Party shall provide substitute copies of documents bearing
19 the confidentiality designation.
20
21
22
23
24

25 **XI. Filing Designated Material**
26

27 42. Any document filed with the Court that reveals any Designated
28 Material shall be done in accordance with Local Rule 79-5.1 In the

1 event the court denies the request to file said Designated Material
2 under seal, the parties shall continue to treat the Designated Material
3 in all other respects as Designated Material governed under this
4 Order. This provisions of this paragraph are limited to documents
5 filed with the Court prior to this case proceeding to trial.
6

7 **XII. Challenges to Confidentiality Designations**

8

9 43. The Parties will use reasonable care when designating documents,
10 things, or information as “CONFIDENTIAL”, “OUTSIDE
11 ATTORNEYS’ EYES ONLY” or “OUTSIDE ATTORNEYS’ EYES
12 ONLY – SOURCE CODE.” Nothing in this Order shall prevent a
13 Receiving Party from contending that any or all documents, things, or
14 information designated as “CONFIDENTIAL” Material, “OUTSIDE
15 ATTORNEYS’ EYES ONLY” Material or OUTSIDE
16 ATTORNEYS’ EYES ONLY – SOURCE CODE Material have been
17 improperly designated. A Receiving Party may, at any time, request
18 that the Producing Party cancel or modify the confidentiality
19 designation with respect to any document, thing, or information
20 contained therein.
21

22 44. A Party shall not be obligated to challenge the propriety of a
23 “CONFIDENTIAL”, “OUTSIDE ATTORNEYS’ EYES ONLY” or
24 “OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE”
25
26
27
28

1 designation at the time made, and the failure to do so shall not
2 preclude a subsequent challenge thereto. Such a challenge shall be
3 written, shall be served on counsel for the Producing Party, and shall
4 identify particularly the document, thing, or information that the
5 Receiving Party contends should be differently designated. If such
6 negotiation fails to resolve the dispute within five (5) days of receipt
7 of the written notice, the procedure for obtaining a decision from the
8 Court is that set forth in Local Rule 37. If the parties wish to file a
9 Joint Stipulation, required by Local Rule 37, under seal, the parties
10 may file a stipulation to that effect or the moving party may file an ex
11 parte application making the appropriate request. The parties must set
12 forth good cause in the stipulation or ex parte application as to why
13 the Joint Stipulation or portions thereof should be filed under seal.
14 The document, thing, or information shall remain as designated until
15 the Court has ruled upon the motion or the parties have agreed
16 otherwise. Any order requiring disclosure shall be drawn as
17 narrowly as possible to protect the interests of all parties concerned.

18
19
20
21
22
23 **XIII. Protected Material Subpoenaed or Ordered Produced In Other**
24 **Litigation**

25
26 45. If a Receiving Party is served with a subpoena or a court order that
27 would compel disclosure of any information, documents or things
28

1 designated in this action as “CONFIDENTIAL”, “OUTSIDE
2 ATTORNEYS’ EYES ONLY” or “OUTSIDE ATTORNEYS’ EYES
3 ONLY – SOURCE CODE”, the Receiving Party must so notify the
4 Designating Party, in writing (by fax and email) promptly, and in no
5 event more than ten (10) calendar days after receiving the subpoena
6 or order. Such notification must include a copy of the subpoena or
7 order. The Receiving Party also must immediately inform, in
8 writing, the party who caused the subpoena or order to issue that
9 some or all of the material covered by the subpoena or order is
10 subject to this Protective Order. In addition, the Receiving Party
11 must deliver a copy of this Protective Order promptly to the party in
12 the other action that caused the subpoena or order to issue. The
13 purpose of imposing these duties is to alert the interested parties to
14 the existence of this Protective Order and to afford the Designating
15 Party in this case an opportunity to try to protect its confidentiality
16 interests in the court from which the subpoena or order issued. The
17 Designating Party shall bear the burdens and the expenses of seeking
18 protection in that court of its Designated Material. Nothing in these
19 provisions should be construed as authorizing or encouraging a
20 Receiving Party in this action to disobey a lawful directive from
21 another court.
22
23
24
25
26
27
28

1 **XIV. Unauthorized Disclosure Of Designated Material**

2 46. If a Receiving Party learns that, by inadvertence or otherwise, it has
3 disclosed Designated Material to any person or in any circumstance
4 not authorized under this Order, the Receiving Party must
5 immediately (a) notify in writing the Designating Party of the
6 unauthorized disclosures, (b) use its best efforts to retrieve all copies
7 of the Designated Material, (b) inform the person or persons to whom
8 unauthorized disclosures were made of all the terms of this Order,
9 and (c) request such person or persons to execute the
10 “Acknowledgment and Agreement to Be Bound” that is attached
11 hereto as Exhibit A.
12

13 **XV. Non-Party Use of this Protective Order**

14 47. A non-party that produces Material voluntarily, or pursuant to a
15 subpoena or a court order, may designate such Material in the same
16 manner, and shall receive the same level of protection under this
17 Protective Order, as any Party to this lawsuit.

18 48. A non-party’s use of this Protective Order to protect its
19 “CONFIDENTIAL” Material, “OUTSIDE ATTORNEYS’ EYES
20 ONLY” Material or “OUTSIDE ATTORNEYS’ EYES ONLY –
21 SOURCE CODE” Material does not entitle that non-party access to
22 “CONFIDENTIAL” Material, “OUTSIDE ATTORNEYS’ EYES
23
24
25
26
27
28

ONLY” Material or “ATTORNEYS’ EYES ONLY – SOURCE
CODE” Material produced by any Party in this case.

XVI. Communications between Party and Counsel of Record

49. Privileged or protected communications or materials transmitted between a Party and its Counsel of Record need not be recorded on the Party’s privilege log or produced in this Case except upon a showing of good cause by a Party, and upon an Order of this Court.

XVII. Duration

50. With the exception described in Paragraph 51, even after the termination of this action, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs.

51. This Protective Order shall not apply to the introduction of evidence at trial. Designated Materials not introduced as evidence at trial shall maintain such protections and designations after commencement of any trial in this matter. With respect to designated Materials introduced as evidence at trial, either party may seek appropriate court orders concerning the handling at trial of such materials.

XVIII. Final Disposition

52. Unless otherwise ordered or agreed in writing by the Producing Party, within sixty (60) calendar days after the final termination of

1 this action, each Receiving Party must destroy or return all
2 Designated Material to the Producing Party. As used in this
3 Paragraph, “all Designated Material” includes all copies, abstracts,
4 compilations, summaries or any other form of reproducing or
5 capturing any of the Designated Material. The Receiving Party must
6 submit a written confirmation of the return or destruction to the
7 Producing Party (and, if not the same person or entity, to the
8 Designating Party) by the 60-day deadline. Notwithstanding this
9 provision, Counsel of Record may retain an archival copy of all
10 pleadings, motion papers, deposition transcripts (including exhibits),
11 transcripts of other proceedings (including exhibits), expert reports
12 (including exhibits), discovery requests and responses (including
13 exhibits), exhibits offered or introduced into evidence at trial, legal
14 memoranda, correspondence or attorney work product, even if such
15 materials contain Designated Material. Any such archival copies that
16 contain or constitute Designated Material remain subject to this
17 Protective Order as set forth in Section XVII (Duration), above.

18 **XIX. Miscellaneous**

19 53. The Parties agree that draft reports, draft declarations, draft
20 affidavits, or notes taken by experts or prepared by Outside
21 Consultants will not be subject to discovery. The Parties also agree
22

1 that all communications (including e-mail communications) between
2 the Parties' Outside Consultants and in-house counsel or Counsel of
3 Record as well as documents relating to such communications,
4 except for documents, information, and things included in or attached
5 to such communications that are directly relied upon by the testifying
6 Outside Consultant in his or her expert report, will not be subject to
7 discovery. Only the final expert report served on an opposing Party
8 and the materials the Outside Consultant relied upon during
9 preparation of the report are discoverable. The Parties will identify
10 and produce copies of any documents "considered by the witness in
11 forming the opinion" as required by Fed. R. Civ. P. 26(a)(2)(B).
12
13
14

15 54. Any of the notice requirements herein may be waived, in whole or
16 in part, but only by a writing signed by the Counsel of Record for the
17 Party against whom such waiver will be effective.
18

19 55. This Order is entered without prejudice to the right of any Party to
20 apply to the Court at any time for modification of this Order, when
21 convenience or necessity requires. Nothing in this Order abridges the
22 right of any person to seek to assert other objections. No Party
23 waives any right it otherwise would have to object to disclosing or
24 producing any information, documents, or things on any ground not
25 addressed in this Protective Order. Similarly, no Party waives any
26
27
28

1 right to object on any ground to the use in evidence of any of the
2 material covered by this Protective Order. The Court shall take
3 appropriate measures to protect Designated Material at trial and any
4 hearing in this case.
5

6 56. This Order shall not diminish any existing obligation or right with
7 respect to Designated Material, nor shall it prevent a disclosure to
8 which the Designating Party consents in writing before the disclosure
9 takes place.
10

11 57. The United States District Court for the Central District of
12 California is responsible for the interpretation and enforcement of
13 this Protective Order. All disputes concerning Designated Material
14 under the protection of this Protective Order shall be resolved by the
15 United States District Court for the Central District of California.
16 This Court retains jurisdiction even after the termination of this
17 action to enforce this Protective Order and to amend this Protective
18 Order as the Court deems appropriate.
19
20
21

22
23 Date: June 10, 2009

24 /s/
Hon. Fernando M. Olguin
United States Magistrate Judge
25
26
27
28

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND
BY PROTECTIVE ORDER

I, _____ [print or type full name], state:

1. I reside at

_____;

2. My present employer is

_____;

3. My present occupation or job description is

_____;

4. I agree to keep confidential all information provided to me in the matter of Sony Corporation v. Vizio, Inc., Case No. CV 08-01135-RGK (FMOx) in the United States District Court for the Central District of California (and the case, CV 09-02129-RGK (FMOx), consolidated therewith), and to be subject to the authority of that Court in the event of any violation or dispute related to this agreement.

5. I have been informed of and have reviewed the Protective Order entered in this case, and I will not divulge any information, documents or things that are subject to the Protective Order except in accordance with the provisions of the Order;

6. I state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____

[printed name]

[signature]

EXHIBIT B

CERTIFICATION OF CONSULTANT

I, _____ [print or type full
name], _____ of

_____ am not an employee of the Party who retained me, or of a competitor of the
opposing Party. If at any time after I execute this Certificate of Consultant and
during the pendency of the Action I become an employee of a competitor of the
opposing Party, I will promptly inform the counsel for the party who retained me in
the Action, and I will not thereafter review any Designated Materials marked by the
opposing Party as “CONFIDENTIAL”, “OUTSIDE ATTORNEYS’ EYES ONLY”
or “OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” unless and until
the Parties agree or the Court orders otherwise.

I state under penalty of perjury under the laws of the United States of
America that the foregoing is true and correct.

Executed on _____

[printed name]

[signature]